

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

REGION 7

AMERICAN STEEL CONSTRUCTION, INC.

Employer,

CASE NO. O7-RC-269162

And

INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL, ORNAMENTAL
AND REINFORCING IRONWORKERS,
LOCAL 25

Petitioner.

**AMERICAN STEEL CONSTRUCTION, INC.'S BRIEF IN OPPOSITION TO UNION'S
REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION DIMISSING
PETITION**

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January 26, 2021

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I. INTRODUCTION

On January 19, 2021, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 25 (the “Union”) filed a Request for Review of the Regional Director’s January 4, 2021 Decision and Order dismissing its RC Petition seeking an election to determine whether it should be certified as the bargaining representative for a bargaining unit it described as “[f]ull time and regular part time journeyman and apprentice field ironworkers” of American Steel Construction, Inc. (“American Steel” or the “Employer”). *See* Petition: Board Ex. 1. The Union’s request for review should be denied for each of the reasons stated in the Regional Director’s January 4, 2021 Decision and Order and those articulated in American Steel’s post December 10, 2020 hearing brief and this opposition Brief. The Union has not demonstrated that compelling reasons exists for review, i.e., that (a) a substantial question of law or policy is raised because of a departure from officially reported Board precedent or (b) the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the Union, as it asserts in its request for review. Indeed, the Union’s request for review is premised on misrepresentation of evidence in the record and its mere, unfounded disagreement with the Regional Director’s findings of fact and conclusion that the petitioned-for unit is inappropriate, which are properly derived from the Hearing Officer’s evaluation of testimony and documentary evidence presented at the December 10, 2020 hearing.

II. COUNTER-STATEMENT OF PROCEDURAL HISTORY¹

A. Background

¹ The Union in its brief selectively references or quotes aspects of the Decision and Order without providing apposite contexts.

On November 18, 2020, the Union filed its RC Petition seeking an election to determine whether it should be certified as the bargaining representative for a bargaining unit it described as “[f]ull time and regular part time journeyman and apprentice field ironworkers” of American Steel. *See* Petition: Board Ex. 1. However, American Steel is not a general steel erector contractor. It does not classify or designate any of its employees as journeymen or apprentice field ironworkers². Its business is operationally and functionally integrated and involves the fabrication of structural steel, steel stairs, steel railings, steel canopies, and miscellaneous other steel products for its customers and installation of these products on buildings that are undergoing construction or renovation in accordance with customer requirements.

All of American Steel’s approximately 30 steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers are cross trained and function as an integrated team, their duties overlap, and there is routine interchange among them. None of these employees has a formal job title or classification or a job description which defines or limits the scope of his responsibilities. Each of these employees may be assigned and most have been routinely assigned to perform installation work depending on need and the number of installation jobs in progress at any given time. Each of these employees may be assigned and most have been routinely assigned to perform work in American Steel’s fabrication shop depending on need, availability of installation work, and if installation work cannot be performed due to inclement

² As a result, American Steel does not know whom the Union deems to be part of the petitioned-for unit. Accordingly, for these reasons alone, the Regional Director properly concluded that no unit as such exists at American Steel. *See United States Steel Corporation*, 192 NLRB 58, 59 (1971). Moreover, the Union was not entitled to a presumption that the petitioned-for unit is appropriate for these reasons and it bore the burden of establishing with evidence that the petitioned-for unit is appropriate. *Id. See also Allen Health Care Services*, 332 NLRB 1308, 1309 (2000). The Union did not satisfy this burden. Accordingly, for these additional reasons, the Regional Director properly concluded that no unit as such exists at American Steel.

weather conditions. They have common supervision and share the same terms and conditions of employment.

American Steel declined to voluntarily recognize the Union as bargaining representative for the petitioned-for unit because all of its approximately 30 steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers share a community of interest and it was evident that the Union was improperly seeking to represent an inappropriate micro unit of its employees contrary to the Board's decisions in *The Boeing Company*, 368 NLRB No. 67 (2019), *PCC Structural, Inc.*, 365 NLRB 160 (2017), and other apposite Board precedent. *See* Employer's Statement of Position: Board Ex. 3. It also was apparent that the petitioned-for unit was based upon the extent of the Union's organizing effort contrary to the prohibition in section 9(c)(5) of the National Labor Relations Act ('NLRA'), 29 U.S.C. 159(c)(5).

B. The Representation Hearing

A Representation Hearing concerning the Union's Petition was held on Thursday, December 10, 2020, before Hearing Officer Ms. Donna Nixon. She determined that the issue presented for determination at the hearing was whether "a unit of the Employer's employees comprised of all full-time and regular part-time journeyman and apprentice field ironworkers" or one that also includes "its drivers, painters, and inside fabricators" is appropriate. *See* Decision and Order, p.1.

C. Applicable Standards

In accordance with the decision of the Board in *The Boeing Company* ("*Boeing*"), 368 NLRB No. 67 (2019), the determination about whether the unit of "[f]ull time and regular part time journeyman and apprentice field ironworkers" proposed by the Union is appropriate involves a three-step analysis pertaining to:

- a. Whether the proposed unit shares an internal community of interest;
- b. Whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with proposed unit members; and
- c. Whether guidelines established by the Board for specific industries with regard to appropriate unit configurations suggest that the proposed craft unit is appropriate.

The Boeing Company, 368 NLRB No. 67, slip op. at 3.

D. American Steel's Position

American Steel argued in its post hearing brief that the evidence adduced at the hearing when evaluated in accordance with the *Boeing* three step process and the Board's traditional community of interest standards evinced that the Union's proposed unit is inappropriate because the petitioned-for unit does not share an internal community of interest³ and the interests of excluded employees do not have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with proposed unit members. According to American, these conclusions ensue because:

- a. American Steel's business is operationally and functionally integrated and involves the fabrication of structural steel, steel stairs, steel railings, steel canopies, and miscellaneous other steel products for its customers and installation of these products on buildings that are undergoing construction or renovation in accordance with customer requirements;
- b. American Steel is not a general steel erector contractor unlike all or the vast majority of employers which are signatories to the multi-employer agreement between the Union and the Associated General Contractors of Michigan ("AGC") or a national master agreement with the International union;
- c. American Steel directly employs all of its installation and steel fabrication employees, equipment operators, maintenance employees, painters, and drivers who function as an integrated team unlike all or the vast majority of employers which are signatories to the

³ See n. 2, *supra*.

multi-employer agreement with the Union or national master agreement with the International union;

d. American Steel does not classify or designate any of its employees as journeymen or apprentice ironworkers unlike all or the vast majority of employers which are signatories to the multi-employer agreement with the Union or national master agreement with the International union;

e. American Steel does not require that applicants for fabrication, installation, equipment operator, maintenance, painter, and driver positions have journeyman status or specialized certifications or licenses of any kind to obtain consideration for employment as fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers unlike all or the vast majority of employers which are signatories to the multi-employer agreement with the Union or national master agreement with the International union;

f. All American Steel employees are cross-trained inhouse to perform both steel fabrication and installation work, they do not participate in a formal apprentice training or apprenticeship program, and any American Steel employee deemed by the Union to be a journeyman or apprentice acquired that status while employed elsewhere unlike all or the vast majority of employers which are signatories to the multi-employer agreement with the Union or national master agreement with the International union;

g. American Steel's steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers function as an integrated team;

h. American Steel does not have designated job departments to which employees are assigned;

i. American Steel's steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers do not have formal job titles or classifications or job descriptions which define or limit the scope of their responsibilities;

j. None of these American Steel employees is permanently assigned inalterable job responsibilities or to a particular job or department;

k. Each of these American Steel employees may be assigned and most have been routinely assigned to perform installation work based on need and the number of installation jobs in progress at any given time;

l. Each of these American Steel employees may be assigned and most have been routinely assigned to perform work in American Steel's fabrication shop based on need, availability of installation work, and if installation work cannot be performed due to inclement weather conditions;

m. Each of these American Steel employees is accountable on a day-to-day basis to each of American Steel's two superintendents depending on whether they are performing fabrication or installation work;

n. American Steel's installation and steel fabrication employees, equipment operators, maintenance employees, painters, and drivers are subject to the same terms and conditions of employment, their wage rates are determined based on their background, skills and experience rather than determined by a wage scale or range applicable to job positions or classifications, and they are eligible for the same benefits;

o. The American Steel employees within the petitioned-for employee unit described as "[f]ull time and regular part time journeyman and apprentice field ironworkers" are not a distinct functional, homogenous, or traditionally departmental grouping of employees with a sufficient mutuality or community of interest which entitle them to union representation separate from excluded employees; and

p. The excluded American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers do not have meaningfully distinct interests in the context of collective bargaining that outweigh similarities the petitioned-for unit.

American Steel also anticipated and addressed in its post hearing brief the Union's argument that the American Steel employees within the petitioned-for unit are an appropriate, separate craft unit to the exclusion of other American Steel fabrication and installation employees. American Steel argued that the evidence adduced at the hearing when evaluated in accordance with applicable standards disclosed that craft unit status is inappropriate for each of the reasons delineated above and because:

a. The proposed unit is not a distinct functional, homogenous, or traditional grouping of journeymen who together with helpers and apprentices are primarily engaged in the performance of work which is not performed by other American Steel fabrication and installation employees; and

b. Their work does not generally require the use of substantial craft skills and specialized tools and equipment that are not utilized by other American Steel fabrication and installation employees routinely assigned to perform installation work on a day-to-day basis. Instead, the duties and responsibilities of the unknown "[f]ull time and regular part time journeyman and apprentice field ironworkers" are integrated with and overlap those of excluded fabrication and installation employees with whom they routinely work and otherwise interact⁴.

⁴ American Steel also argued that the Union also is not qualified to represent the proposed unit because:

E. The Regional Director's Decision and Order

On January 4, 2021, the Regional Director issued a Decision and Order, stating that “[b]ased on the entire record of this proceeding and for the reasons set forth below, I find that the petitioned-for unit is inappropriate for the purposes of collective bargaining because it excludes employees whose interests are not sufficiently distinct from those of employees within the proposed group.” See Decision and Order, p.1 (*emphasis added*). The Regional Director concluded that “a bargaining unit consisting solely of all full-time and regular part-time journeyman field iron workers and apprentices is not appropriate for the purposes of collective bargaining in this case *because the evidence is insufficient* to establish that the Employer’s employees who work on job sites in the field as installers share a community of interest sufficiently distinct from excluded employees.” See Decision and Order, p.6 (*emphasis added*).

a. The Union does not negotiate contracts with a company like American Steel on an individual basis;

b. The employers with which the Union deems it has a contract actually are parties to a multi-employer agreement between the Union and the AGC or a national master agreement with the International Union;

c. Journeymen and apprentices who perform work for employers that are signatories to a multi-employer agreement between the Union and the AGC or national master agreements with the International Union are not directly employed by the employers unlike American Steel employees, but instead are referred by the Union to the employers for work on a job-by-job basis;

d. Journeymen and apprentices who perform work for employers that are signatories to a multi-employer agreement between the Union and the AGC or national master agreements with the International Union are laid off at the conclusion of each job unlike American Steel employees;

e. When laid off journeymen and apprentices whose terms and conditions of employment are governed by a multi-employer agreement between the Union and the AGC or national master agreements with the International Union will work again depends on whether there are new construction jobs for which referral for work is needed and requested by signatory employers from the Union and where they are placed on the referral list used by the Union to refer employees for work unlike the experience of American Steel employees; and

f. the Union also determines who is qualified to be a journeyman and how long an employee is classified as an apprentice unlike what pertains at American Steel.

The Regional Director dismissed the Union’s petition for these reasons and “[b]ecause the Petitioner does not wish to proceed to an election in any unit other than the unit proposed in its petition.” *See* Decision and Order, p.1, 7-8. In other words, the Union confirmed that the petitioned-for unit it sought to represent was based upon the extent of its organizing effort. *Compare id.*

F. The Findings and Conclusions of the Regional Director

The Regional Director’s January 4, 2021 Decision and Order is premised on the following findings of fact and conclusions that are substantiated by evidence in the record of the December 10, 2020 hearing:

- At the time of their hire, the petitioned-for employees generally start work in the shop and advance to the field.
- The Employer does not appear to have established formal requirements for skills, education, job qualifications for these employees.
- However, it is indisputable that the Employer values skills such as blueprint reading and stick welding in its field installers.
- Yet, the evidence also tends to show that ostensible shop employees may also have these skills and use them when working in the field, where they generally spend up to 30% of their time⁵.
- Likewise, ostensible field employees may spend up to 30% of their time in the shop.
- Thus, while the work performed in these areas differs, employees generally have similar skills—if not to the same degree. *See Phoenician*, 308 NLRB 826, 828 (1992) (no special skills difference between golf course maintenance employees and landscapers).
- Likewise, this evidence demonstrates significant employee interchange. *See Gray Drug Stores, Inc.*, 197 NLRB 924, 925 (1972) (frequent temporary transfers).

⁵ The record discloses that most employees are scheduled to work either in the field or at the shop on a day-to-day basis and that the amount of time spent working in the field or at the shop varies based on need. The record does not support a finding that ostensible shop employees work no more than 30% of their time in the field. Instead, they could work more than 30% of the time in the field depending on need and how they are scheduled on a day-to-day basis.

- Further, the shop and field employees have the same wages and benefits, *Allied Gear & Machine Co.*, 250 NLRB 679 (1980), and they are highly functionally integrated, *Transerv Systems*, 311 NLRB 766, 766 (1993) (high degree of functional integration where bicycle messengers may perform a complete pickup and delivery themselves, transfer the material to a driver for delivery, or deliver the material to the Employer's offices for sorting and transfer to a different messenger or driver).
- Yet, when working in the field, employees do not share a workspace and general working conditions with employees working in the shop, *United Rentals, Inc.*, 341 NLRB 540, 541-42 (2004); have close, daily contact with their peers in the shop, *J.C. Penney Co.*, 328 NLRB 766, 767 (1999) (telemarketing department employees frequently contact employees in the customer service department to expedite rush orders or in relation to customer inquiries); or report to the same supervisors, *Sears, Roebuck & Co.*, 191 NLRB 398, 404-406 (1971) (appropriate unit where each group reports to different immediate supervisors but one centralized manager).
- Overall, the level of employee interchange and functional integration detailed above dwarfs such differences. See *United Rentals, Inc.*, 341 NLRB at 541 (overruling the Regional Director's direction of an election on the basis of significant overlapping duties and interchange, common labor relations control, common oversight and assignment of work, common hours of work, and similar wages and benefits).
- Although the employees who generally work in the field appear to share a community of interest, their differences from the employees who generally work in the shop are not sufficiently distinct so as to warrant a separate bargaining unit. See *Wheeling Island Gaming*, 355 NLRB at 641-42.
- Rather, the record discloses and I find that, although employees working in the shop and in the field perform different functions, have different day-to-day-supervision, and different working conditions at their job locations, there is significant evidence of employee interchange, functional integration, common hours of work, the same wages and benefits, and similar skills. There is a community of interest among all the employees. See *Berea Publishing Co.*, 140 NLRB 516, 518 (1963) (although employees engage primarily in different processes, employees do similar work, perform functions requiring similar skills, work moves from one department to the other for further processing, and employees in both departments share the same working conditions and overall supervision in a small plant).
- The employees in the shop fabricate the steel parts that the drivers deliver and the field installers install. All of these employees' processes are needed for the Employer to function. This means that they work together frequently and interactively.

- Thus, the differences applicable to those employees who generally work in the field, as identified above, are insufficient to establish meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the petitioned-for unit members. See *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 11 (quoting *Constellation Brands U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)).
- Finally, with regard to industry practice, Petitioner presented evidence of unit composition separating shop from field employees in what appear to be bargaining units where employers have recognized Petitioner as the Section 8(f) representative of their employees⁶. Here, however, Petitioner seeks Section 9(a) status and the Board has found units consisting of both shop and field workers appropriate where the employer both fabricates and installs structural steel. See, e.g., *Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957).

See Decision and Order, pp.5-7.

The Regional Director also found that the petitioned-for unit does not constitute a craft unit because the standards for craft unit status articulated in *Burns & Roe Services Corporation*, 313 NLRB 1307, 1308 (1994), were not satisfied:

- The evidence tends to show that there is no history of collective bargaining with this Employer, no formal training or apprenticeship program for the Employer's field installers; the work of the installers is highly functionally integrated with the excluded employees; the Employer assigns work in the field according to need and ability; and the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. Therefore, I conclude the petitioned-for employees do not comprise a craft unit. See Decision and Order, p.6 n.5.

III. SUMMARY OF ARGUMENT

The Union's request for review should be denied for each of the reasons stated in the Regional Director's January 4, 2021 Decision and Order, those articulated in American Steel's post December 10, 2020 hearing brief, and because:

⁶ This inference was reasonably drawn from the president of the Union's evasive answers to questions about how the Union obtained recognition from contractors who are parties to a multi-employer agreement with the Union. See Tr. 220-226.

1. The Regional Director was charged with finding an appropriate unit, was required to consider the appropriateness of what often is characterized as a wall-to-wall unit, and had the authority to determine that a unit sought by the petitioner is inappropriate. *See, e.g., The Boeing Company*, 368 NLRB No. 67 (2019); *United States Steel Corporation*, 192 NLRB No. 12 (1971); *Brand Precision Services*, 313 NLRB 657 (1994); *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). *Compare Johnson Controls, Inc.*, 322 NLRB No. 109 (1996); *North American Aviation*, 162 NLRB 1267, 1270 (1967); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962). *See also Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957).

2. The Regional Director correctly analyzed and applied apposite community of interest and/craft unit factors in conjunction with the evidence in the record, which discloses the operationally and functionally integrated nature of American Steel’s business and routine interchange of its fabrication and installation employees, and correctly determined that the petitioned-for unit is inappropriate and a unit of American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers is the appropriate unit⁷. *Id.*

⁷ The Union in its post December 10, 2020 hearing brief relied primarily on Board precedent which substantiates the Regional Director’s January 4, 2021 Decision and Order and argument made by American Steel. *Compare Buckhorn, Inc.* 343 NLRB 201(2004) (unit inappropriate), cited at p.5 of the Union’s *unpaginated* post hearing brief; *Brand Precision Services*, 313 NLRB 657 (1994) (unit inappropriate), cited at p. 6 of the Union’s post hearing brief; *Transerv Systems*, 311 NLRB 766 (1993) (unit inappropriate), cited at p. 9 of the Union’s post hearing brief and also cited by the Regional Director, Decision and Order, p. 6; and *Aztar Indiana Gaming Company*, 349 NLRB 603 (2007) (unit inappropriate), cited at p. 9 of the Union’s post hearing brief. It also relied on *Lockheed Aircraft Corporation*, 121 NLRB 1541 (1958), cited at p. 8 of the Union’s post hearing brief, which was premised on precedent overruled or repudiated in *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966).

3. The Regional Director's January 4, 2021 Decision and Order dismissing the Union's petition is supported by substantial evidence in the record of the December 10, 2020 hearing. *Id.*

4. Requests for review are granted by the Board only when: (a) a substantial question of law or policy is raised because of the absence of, or a departure from, officially reported Board; (b) the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party; (c) the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; and (d) there are compelling reasons for reconsideration of a an important Board rule or policy. *See* Rule and Regulation 102.67(c).

5. The Union otherwise has not demonstrated that compelling reasons exists for review, i.e., that (a) a substantial question of law or policy is raised because of a departure from officially reported Board precedent or (b) the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the Union, as asserted by the Union in its request for review.

6. The Union's request for review is premised on misrepresentation of evidence in the record⁸ and its mere, unfounded disagreement with the Regional Director's findings and

⁸ For example, the Union falsely states at page 22 of its brief that American Steel superintendent, Mr. Tim Gordon, testified that comparing field installers to shop fabrication workers is like comparing "apples and onions. It's totally different." However, Mr. Gordon's comment was made in response to the Hearing Officer's question about whether the company's employment policies and procedures are the same for shop and field employees. Mr. Gordon was discussing the company's policies pertaining to rest and meal breaks at the time. He then elaborated that the policies are essentially the same or "pretty alike, but there's variables because of weather and driving and drive times and trains and accidents" with respect to the times when employees take rest and meal breaks. *See* Tr. 107-109.

conclusions derived from the Hearing Officer's evaluation of testimony and documentary evidence presented at the December 10, 2020 hearing that the petitioned-for unit is inappropriate.

7. The petitioned-for unit sought by the Union is too restrictive in scope and based upon the extent of its organizing efforts, contrary to the prohibition in section 9(c)(5) of the NLRA, 29 U.S.C. 159(c)(5). *Compare* Decision and Order, p.1, 7-8.

8. The Union primarily relies on the Board's decision in *McCann Steel Company, Inc* ("McCann Steel"), 179 NLRB 635. 65 (1969)⁹, as support for its request for review. Such reliance is misplaced because the decision predates the Board's decision in *The Boeing Company*, 368 NLRB No. 67 (2019), and the Board in *McCann Steel* did not conduct the *Boeing* three step analysis. In particular, the Board in *McCann Steel* did not assess whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with proposed unit members as required by the Board's *Boeing* decision. *Compare McCann Steel*, 179 NLRB at 636-636 with *The Boeing Company*, 368 NLRB No. 67, slip op. at 4, citing *PCC Structural, Inc.*, 365 NLRB 160 (2017), slip op. at 11 (quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016).

11. The facts and circumstances upon which the Board's decision in *McCann Steel* was premised are distinguishable from those applicable to the Union's RC petition and the decision is otherwise inapposite to and provides no basis to overrule the Regional Director's January 4, 2021 Decision and Order because:

(a) it involved two petitions-one by a local union seeking to represent a unit of specifically designated or classified field erection crew employees and one by another union to seeking

⁹ The *McCann Steel* decision was not discussed or cited in the Union's post hearing brief. The Union's reliance upon the decision evinces an attempt to raise issues not timely presented to the Regional Director contrary to Rule and Regulation 102.67(e).

represent specifically designated or classified production and maintenance employees and truckdrivers;

(b) the Union in this case seeks to represent a bargaining unit it describes as “[f]ull time and regular part time journeyman and apprentice field ironworkers” of American Steel, *see* Petition: Board Ex. 1, although

- (i) American Steel is not a general steel erector contractor,
- (ii) it does not classify or designate any of its employees as journeymen or apprentice field ironworkers,
- (iii) it does not classify or designate any of its employees as field erection crew employees or production and maintenance employees and truckdrivers as the employer did in *McCann Steel Company*; and
- (iv) American Steel employees are cross trained, most employees are scheduled to work either in the field to perform installation work or at the shop on a day-to-day basis, and the type of work performed and the amount of time spent working in the field by employees varies based on need; and

(c) the Board’s decision in *McCann Steel* was based on a decision and the record in a prior proceeding involving the employer and one of the local unions in which the Board found that:

- (i) the specifically designated or classified field erection crew employees performed essentially different types of work than specifically designated or classified production and maintenance employees and truckdrivers;
- (ii) they utilized special skills of an ironworker to perform the work under separate immediate supervision and with limited interchange;
- (iii) they were paid a premium to perform the work; and
- (iv) the specifically designated or classified production and maintenance employees and truckdrivers *only* were “assigned to the field when some ‘little insignificant job will come up,’” *compare, McCann Steel*, 179 NLRB at 636,

unlike what pertains at American Steel, i.e., American Steel employees are cross trained, most employees are scheduled to work either in the field to perform installation work or at the shop on a day-to-day basis, and the type of work performed and the amount of time spent working in the field by employees varies based on need.

IV. STATEMENT OF FACTS

A. American Steel’s Business, Organization, and Operations

American Steel is a company with approximately 35 employees and one facility that is located in Livonia, Michigan. *See* Tr.16-21. It is not a general steel erector contractor, *see* Tr.16-21, unlike all or the vast majority of employers which are signatories to the multi-employer agreement between the Union and the Associated General Contractors of Michigan (“AGC”) or a national master agreement with the International union, *see* Tr. 219-228. Instead, its business involves the fabrication of structural steel, steel stairs, steel railings, steel canopies, steel pipes, steel tanks and miscellaneous other steel products for its customers and installation of these products on buildings that are undergoing construction or renovation in accordance with customer requirements¹⁰. *See* Tr. 16-21, 82-85.

1. Fabrication and Installation Employees

American Steel directly employs all of its approximately 30 steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers who function as an integrated team, *see* Tr. 18-23, unlike all or the vast majority of employers which are signatories to the multi-employer agreement with the Union or national master agreement with the International union, *see* Tr. 219-228. American Steel does not require that applicants for employment have journeyman status or specialized certifications or licenses of any kind to obtain consideration for employment as fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers, *see* Tr. 18-26, 56-59,78-80, unlike all or the vast majority of employers which are signatories to the multi-employer agreement with the Union or national master agreement with the International union, *see* Tr. 219-228.

¹⁰ American Steel sometimes fabricates steel products for customers who do not retain it for installation of the products. *See* Tr. 82-85.

American Steel does not classify or designate any of its employees as journeymen or apprentice field ironworkers, *see* Tr. 17-26, unlike all or the vast majority of employers which are signatories to the multi-employer agreement with the Union or national master agreement with the International union, *see* Tr. 219-228. None of its fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers has a formal job title or classification or job description which defines or limits the scope of his responsibilities. None of these employees is permanently assigned inalterable job responsibilities. *See* Tr. 19-119, 130-205, 230-235.

All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers receive the same in-house training enabling them to perform both steel fabrication and installation work. They do not participate in a formal apprenticeship program or training program that is tantamount to an apprenticeship program. Any American Steel employee deemed by the Union to be a journeyman acquired that status while employed elsewhere¹¹. *See* Tr. 19-25, 56-59, 68-80, 148-151. With limited exceptions, all individuals who are hired by American Steel commence employment in the fabrication shop where they receive cross training and progress through job functions concerning all aspects of steel fabrication and installation, safe operation of steel fabrication and installation equipment, safe operation of vehicles, and OSHA and MIOSHA health and safety standard applicable to both steel

¹¹ American Steel will provide inhouse training for any necessary special certifications or licenses or it will retain an outside consultant to provide any needed training. Some of its employees may have qualified for any specialized certifications of licenses held by them through previous employment. *See* Tr. 56-59, 64.

fabrication and installation, among other types of training, before they are assigned to perform installation work¹². *See* Tr. 19-25, 56-59, 68-80, 148-151.

All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform work in the fabrication shop on a day-to-day basis depending on need, availability of installation work, or if inclement weather prevents installation work from proceeding. *See* Tr. 19-119, 130-205, 230-235. American Steel employees who are assigned to work in the fabrication shop on any given day perform any of the following functions: fitting, which entails measuring, sizing, and connecting steel parts into the applicable structural steel, steel stairs, steel railings, steel canopies, steel tanks, and miscellaneous other steel products requested by its customer in accordance with engineering and architectural measurements, designs, and specifications; welding of the products requested by its customer in accordance with engineering and architectural measurements, designs, and specifications; maintenance of equipment used in both the steel fabrication and installation process; painting of finished steel product; preparation or staging of finished steel product for transport to installation job sites; and transport of finished product to the installation job sites. *See* Tr. 19-119, 130-205, 230-235. *See* Fabrication work also is performed at installation job sites on an as needed basis. *See* Tr. 83-85.

All of American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis depending on need. *See* Tr. 19-119,

¹² The employment history of Mr. Timothy Gordan, an American Steel superintendent who testified on its behalf at the hearing, exemplifies this progression of training and job responsibilities. *See* Tr. 17-25.

130-205, 230-235. American Steel employees who are assigned to perform installation work at a job site on any given day perform any of the following functions: unloading of vehicles used to transport finished product from the fabrication shop to the installation job location; preparation or staging of finished product for installation; hoisting of finished product to the location where it will be installed; drilling holes into the finished product and foundation where it will be placed as necessary in accordance with engineering and architectural measurements, designs, and specifications; bolting of the product into place as necessary in accordance with engineering and architectural measurements, designs, and specifications; and welding of product as necessary in accordance with engineering and architectural measurements, designs, and specifications. *See* Tr. 19-119, 130-205, 230-235.

An American Steel crane operator facilitates the preparation, staging, and hoisting of finished product for installation at the appropriate installation location. *See* Tr. 19-119, 130-205, 230-235. All American Steel employees working at an installation job site are expected to assist with unloading, staging and hoisting of finished product to the location where it will be installed. *See* Tr. 19-119, 130-205, 230-235. The employees who transport the finished product to the installation job site also are expected to assist with unloading, staging and hoisting of finished product to the location where it will be installed. *See* Tr. 19-119, 130-205, 230-235.

All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers are required to attend weekly all employee meetings at the Livonia facility. These generally occur on Monday and pertain to continuous training and updates about OSHA and MIOSHA health and safety standards and matters critical to satisfying customer requirements, among other subjects. Tr. 59-60.

2. The Integrated Fabrication and Installation Process and Routine Interchange of Employees

American Steel deems all of its steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers to be part of one team and deploys them accordingly. Its products are fabricated at its shop in Livonia in accordance with engineering and architectural designs, measurements, and specifications, transported to the job site, and installed by employees, most of whom are assigned their work responsibilities on a day-to-day basis based on need, in accordance with customer engineering and architectural designs, measurements, and specifications. *See* Tr. 19-119, 130-205, 230-235.

All of American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis depending on need. Installation assignments are made on a day-to-day basis by one of American Steel's superintendents, Mr. Timothy Gordon. *See* Tr. 19-119, 130-205, 230-235.

All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform work in the fabrication shop depending on need, availability of installation work, or if inclement weather prevents installation work from proceeding. *See* Tr. 19-119, 130-205, 230-235. Employees performing installation work on any given day also routinely interact with employees performing fabrication work if issues arise concerning whether product has been correctly fabricated in accordance with the customer's engineering and architectural designs, measurements, and specifications. *See* Tr. 19-119, 130-205, 230-235.

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers have regular contact with one another both at the fabrication shop in Livonia and at installation job sites because of American Steel's integrated

steel fabrication and installation process. *See* Tr. 19-119, 130-205, 230-235. As noted above, they are required to attend weekly all employee meetings at the Livonia facility. Tr. 59-60. They also share the same facilities for meals and breaks depending on where they are deployed on any given day. *See* Tr. 93-96.

3. Lack of Departments

American Steel does not have designated job departments to which employees are assigned. *See* Tr. 18-26. For example, there is no fabrication welding department or installation welding department. Welders are not exclusively assigned to perform either fabrication welding or installation welding responsibilities. A welder can be assigned to weld in the fabrication shop or at installation job sites based on need and his background, experience, and skills. *See* Tr. 19-119, 130-205, 230-235.

4. Supervision

American Steel fabrication and installation workers, equipment operators, maintenance employees, painters, and drivers are supervised by and report to its two superintendents, Timothy Gordon and Sean Asbel. *See* Tr. 25-26. There is no clear division of responsibilities between Messrs. Gordon and Asbel with regard to their supervision of employees. Mr. Gordon is responsible for all installation work, assigns employees to perform installation work on a day-to day-basis, and employees assigned to perform installation work are accountable to him while they are assigned installation responsibilities even if they also perform fabrication work. *See* Tr. 25-26, 99-105. Mr. Asbel is responsible for all fabrication work and employees who are assigned fabrication responsibilities are accountable to him even if they also perform installation work. *See* Tr. 25-26, 99-105. Drivers are accountable

to either Mr. Gordon or Mr. Asbel depending on their responsibilities on any given day. *See* Tr. 103-104.

There is a leader for each team that performs installation work at a job site. Mr. Gordon determines who shall function as a team leader and the members of each job site team on a day-to-day basis based on need. The designated installation job team leaders and members routinely include employees who also have fabrication responsibilities. *See* Tr. 49-51, 61-64, 99-102, 114-119, 145-148, 158-162.

Each team leader takes direction from Mr. Gordon. The team leader exercises no independent judgment with respect to job assignments. *See* Tr. 49-51, 61-64, 99-102, 114-119, 145-148, 158-162. He assigns work to team members based on direction from Mr. Gordon, installation job requirements, and familiarity with the team member's skills and abilities. *See* Tr. 49-51, 61-64, 99-102, 114-119, 145-148, 158-162. The team leader has no authority to: schedule a team member for work or determine his hours of work; address pay or other issues that may arise at the job site; grant or mandate overtime; and discipline, discharge or impose corrective action on a team member. *See* Tr. 49-51, 61-63, 99-102, 114-119.

5. Terms and Conditions of Employment

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers work similar hours, are subject to the same terms and conditions of employment, are subject to the same employee handbook and work rules, wear similar attire and protective gear, work under the same safety requirements, participate in ongoing training regarding safety and other matters, and are eligible for the same fringe benefits. *See* Tr. 75-77, 86-89, 105-107, 113-119; Board Ex. 6: Handbook. There is no formal

wage range or scale for employees based on whether they perform fabrication or installation or work, operate cranes or other equipment, perform maintenance work, transport finished product to work sites, or paint product. Wage rates are determined based on tenure, background, skills and experience¹³. See Tr. 75-77, 86-89, 105-107, 113-119; Board Ex. 6: Handbook.

6. The Union Does Not Typically Represent Employees Like Those Employed by American Steel

The Union's president, Dennis Aguirre, testified that the Union does not negotiate contracts with an employer like American Steel on an individual basis. Instead, the employers with which the Union purportedly has a contract are parties to a multi-employer agreement between the Union and the Associated General Contractors of Michigan ("AGC") and the Great Lakes Fabricators and Erectors Association or a national master agreement with the International union. *See* Tr. 219-221, 224-225. He confirmed that, unlike American Steel employees, employees who perform work for employers that are signatories to the multi-employer or national master agreements typically are not directly employed by the employers. Instead, they are referred by the Union to the employers for work on a job-by-job basis. *See* Tr. 221-222, 226-228. They are laid off at the conclusion of each job. When they will work again depends on whether there are new construction jobs for which referral for work is needed and requested from the Union and where they are placed on the referral list used by the Union to refer employees for work. *See* Tr. 221-222, 226-228. The Union president also testified that the Union determines who is qualified to be a journeyman and how long an employee is classified as an apprentice. *See* Tr. 219-221, 224-225.

¹³ For example, an employee performing installation work could be paid less, the same, or more than an employee performing fitting work in the fabrication shop. A welder performing installation work could be paid less, the same, or more than a welder working in the fabrication shop.

VI. THE PETITIONED-FOR UNIT IS NOT AN APPROPRIATE UNIT

A. Apposite Board Precedent

In *PCC Structural, Inc.*, 365 NLRB No. 160, the Board announced its “return[] to the traditional community-of-interest standard that [it] has applied throughout most of its history.” *The Boeing Company* (“*Boeing*”), 368 NLRB No. 67 (2019), slip op. at 2, quoting *PCC Structural*, slip op. at 7. Under this standard, when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board applies its traditional community-of-interest factors to “determine whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit.” *Id.*

The community-of-interest factors historically considered by the Board are:

“[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.”

Boeing, slip op. at 2, quoting *PCC Structural*, slip op. at 5 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)).

When weighing these factors, the Board

never addresses, solely and in isolation, the question whether the employees in the unit sought have interests in common with one another. Numerous groups of employees fairly can be said to possess employment conditions or interests “in common.” Our inquiry—though perhaps not articulated in every case—necessarily proceeds to a further determination whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit.

Boeing, slip op. at 2-3, quoting *Wheeling Island Gaming*, 355 NLRB 637, 637 fn. 2 (2010) (emphasis and citation omitted). As the Board explained in *PCC Structural*:

[t]he required assessment of whether the sought-after employees' interests are sufficiently distinct from those of employees excluded from the petitioned-for group provides some assurance that extent of organizing will not be determinative, consistent with Section 9(c)(5); it ensures that bargaining units will not be arbitrary, irrational, or "fractured"—that is, composed of a gerrymandered grouping of employees whose interests are insufficiently distinct from those of other employees to constitute that grouping a separate appropriate unit; and it ensures that the Section 7 rights of excluded employees who share a substantial (but less than "overwhelming") community of interests with the sought-after group are taken into consideration.

Boeing, slip op. at 3, *quoting PCC Structural*s, slip op. at 5.

The Board will consider "both the shared and the distinct interests of petitioned-for and excluded employees" when it determines whether the petitioned-for unit is appropriate. *Boeing*, slip op. at 3, *quoting PCC Structural*s, slip op. at 11. This analysis should be conducted in accordance with the Board's traditional community of interest precedent. *Boeing*, slip op. at 3, *citing Wheeling Island Gaming*, 355 NLRB 637, 637 fn. 2; *Newton-Wellesley Hospital*, 250 NLRB 409, 411–412 (1980).

In *Boeing*, the Board clarified its decision in *PCC Structural*s contemplates a three-step process for determining an appropriate bargaining unit under its traditional community-of-interest test:

First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

Boeing, slip op. at 3.

B. Step One: Shared Interests Within the Petitioned-for Unit

The first *Boeing* step is a determination about whether the petitioned-for unit has an internal community of interest. *Boeing*, slip op. at 3. This involves consideration of the following traditional community-of-interest factors:

"[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with

other employees; have distinct terms and conditions of employment; and are separately supervised.”

Boeing, slip op. at 2, quoting *PCC Structural*s, slip op. at 5 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)), to ““identify shared interests among members of the petitioned-for unit,”” *Boeing*, slip op. at 3, citing *PCC Structural*s, slip op. at 9 (quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)). A unit without an internal, shared community of interest is inappropriate. *Boeing*, slip op. at 3. The traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit. *Boeing*, slip op. at 3, citing *Saks & Co.*, 204 NLRB 24, 25 (1973); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004)).

1. Step One Analysis

The Union has defined its petitioned-for unit as “[f]ull time and regular part time journeyman and apprentice field ironworkers” of American Steel. However, the Company does not classify or designate any of its employees as journeymen or apprentice field ironworkers. As a result, it does not know whom the Union deems to be part of the petitioned-for unit. Accordingly, for this reason alone, the Regional Director should have concluded that no unit as such exists at American Steel, *see United States Steel Corporation*, 192 NLRB 58, 59 (1971), and that the petitioned-for unit lacks requisite internal, shared community of interest, *id.*

a. No departments

"A particularly important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation." *Gustave Fisher, Inc.*, 265 NLRB No. 130, n. 5 (1981). The Union's petitioned-for unit does not have such conformity.

American Steel directly employees all of its steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers who function as an integrated team. American Steel does not have designated job departments to which employees are assigned. For example, there is no fabrication or installation department. Welders are not exclusively assigned to perform either fabrication welding or installation welding responsibilities. A welder can be assigned to weld in the fabrication shop or at installation job sites based on need and his background, experience, and skills.

American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers do not have formal job titles or classifications or job descriptions which define or limit the scope of their responsibilities. None of these employees is permanently assigned inalterable job responsibilities. Each of these employees may be assigned and most have been routinely assigned to perform installation work on a day-to- day basis based on need and the number of installation jobs in progress at any given time. Each of these employees may be assigned and most have been routinely assigned to perform work in American Steel's fabrication shop based on need, availability of installation work, and if installation work cannot be performed due to inclement weather conditions

Hence, for these reasons, the petitioned-for unit lacks requisite internal, shared community of interest.

b. No Distinct Skills and Training

American Steel does not require that applicants for employment have journeyman status, certifications, or licenses of any kind to obtain consideration for employment as fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers. All American Steel employees receive the same in-house training enabling them to

perform both steel fabrication and installation work. They do not participate in a formal apprenticeship program or inhouse or other training program that is tantamount to an apprenticeship program. Any American Steel employee deemed by the Union to be a journeyman acquired that status while employed elsewhere.

With limited exceptions, all individuals who are hired by American Steel commence employment in the fabrication shop where they receive cross training and progress through job functions concerning all aspects of steel fabrication and installation, safe operation of steel fabrication and installation equipment, safe operation of vehicles, and OSHA and MIOSHA health and safety standard applicable to both steel fabrication and installation, among other types of training, before they are assigned to perform installation work.

Hence, for these reasons, the petitioned-for unit lacks requisite internal, shared community of interest.

c. No Distinct Job Functions, No Performance of Distinct Work, and Regular Overlap, Functional Integration, and Interchange with Excluded Employees

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers function as an integrated team. None of these employees has a formal job title or classification or job description which defines or limits the scope of his responsibilities. None of these employees is permanently assigned inalterable job responsibilities.

All of American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis depending on need. Installation assignments are made on a day-to day basis by one of American Steel's superintendents, Mr. Timothy Gordon. All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely

assigned to perform work in the fabrication shop depending on need, availability of installation work, or if inclement weather prevents installation work from proceeding.

American Steel's steel fabrication and employees, equipment operators, maintenance employees, painters, and drivers have regular contact with one another both at the fabrication shop in Livonia and at installation job sites because of American Steel's integrated steel fabrication and installation process. Employees performing installation work on any given day routinely interact with employees performing fabrication work if issues arise concerning whether product has been correctly fabricated in accordance with the customer's engineering and architectural designs, measurements, and specifications. As noted above, American Steel's steel fabrication and employees, equipment operators, maintenance employees, painters, and drivers are required to attend weekly all employee meetings at the Livonia facility. They also share the same facilities for meals and breaks depending on where they are deployed on any given day.

Hence, for these reasons, the petitioned-for unit lacks requisite internal, shared community of interest.

d. Common Terms and Conditions of Employment

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers work similar hours, are subject to the same terms and conditions of employment, are subject to the same employee handbook and work rules, wear similar attire and protective gear, work under the same safety requirements, participate in ongoing training regarding safety and other matters, and are eligible for the same fringe benefits. There is no formal wage range or scale for employees based on whether they perform fabrication or installation or work, operate cranes or other equipment, perform

maintenance work, transport finished product to work sites, or paint product. Wage rates are determined based on tenure, background, skills and experience.

Hence, for these reasons, the petitioned-for unit lacks requisite internal, shared community of interest.

e. Supervision

American Steel fabrication and installation workers, equipment operators, maintenance employees, painters, and drivers are supervised by and report to its two superintendents, Timothy Gordon and Sean Asbel. There is no clear division of responsibilities between Messrs. Gordon and Asbel with regard to their supervision of employees. Mr. Gordon is responsible for all installation work, assigns employees to perform installation work on a day-to day-basis based on need even if they also perform fabrication work, and employees assigned to perform installation work are accountable to him while they are assigned installation responsibilities even if they also perform fabrication work. Mr. Asbel is responsible for all fabrication work and employees who are assigned fabrication responsibilities are accountable to him even if they also perform installation work.

Hence, for these reasons, the petitioned-for unit lacks requisite internal, shared community of interest.

f. Summary

Regardless of whom the Union deems to be “[f]ull time and regular part time journeyman and apprentice field ironworkers,” the interests shared by them are not unique from those of the excluded American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers. The petitioned-for unit is inappropriate for this reason. *See The Boeing Company*, 368 NLRB No. 67 (2019) (the proposed unit of technicians

and technician inspectors was deemed inappropriate because these classifications did not share a community of interest with each other and, even if they did, they did not share one that is sufficiently distinct from excluded production and maintenance employees); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004) (“In reaching the conclusion that the Regional Director’s unit determinations are not appropriate, we rely on the fact that the differences *among* the fluid processing unit employees and *among* the distribution unit employees are nearly as great as the differences *between* the units” (emphasis in original).) Moreover, if the petitioned-for unit includes employees who alternate between installation work and fabrication work functions, then it includes employees who are supervised by a different superintendent depending on the job functions that they are performing at any given time. As to these employees, there is a disparity of interests that outweighs any community of interest within the petitioned-for unit. *Id.* Accordingly, the Union’s petitioned-for unit does not satisfy the first step of the *Boeing* analysis. *Id.* See also *United States Steel Corporation*, 192 NLRB No. 12 (1971); *Brand Precision Services*, 313 NLRB 657 (1994); *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Compare *Johnson Controls, Inc.*, 322 NLRB No. 109 (1996) (the petitioned for unit of craft and non-craft employees deemed appropriate because of the integrated nature of the work); *North American Aviation*, 162 NLRB 1267, 1270 (1967) (the Board held that it a petitioned-for unit of welders which was to have been severed from an established unit of welders and production and maintenance employees was inappropriate because it would have been disruptive to the integrated nature of the employer’s processes); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962) (refusing to sever truck drivers from existing production and maintenance unit).

C. Step Two: Shared Interests of Petitioned-For and Excluded Employees

The second *Boeing* “step requires a comparative analysis of excluded and included employees.” *Boeing*, slip op. at 4. The Board in *PCC Structurals* stressed that it is not enough to “focus[] on the interests shared among employees *within* the petitioned-for group.” *Boeing*, slip op. at 4, citing *PCC Structurals*, slip op. at 10 (emphasis in original). Instead, the inquiry must also consider whether ““excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.”” *Boeing*, slip op. at 4, citing *PCC Structurals*, slip op. at 11 (quoting *Constellation Brands*, 842 F.3d at 794) (emphasis in *Constellation Brands*). This also is a traditional community-of-interest analysis of the following factors:

“[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.”

Boeing, slip op. at 2, quoting *PCC Structurals*, slip op. at 5 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). See also *Boeing*, slip op. at 4, citing *Harrah’s Club*, 187 NLRB 810, 812–813 (1971) (finding that “a unit limited to maintenance department employees does not comprise a homogeneous grouping of employees possessed of interests sufficiently distinct from other employees to constitute a separate unit appropriate for purposes of collective bargaining” and that all employees performing a similar primary function must be included in the unit); *Texas Color Printers, Inc.*, 210 NLRB 30, 31 (1974) (“[I]n view of the frequent work contacts and temporary interchange and overlapping supervision of employees of the shipping and receiving and bindery departments, and in the absence of any bargaining history as to any of the plant employees, we find

that the shipping and receiving department employees do not enjoy a sufficiently distinct community of interest to warrant their establishment as a separate appropriate unit apart from other employees.”).¹⁴

The fact that excluded employees have *some* community-of-interest factors in common with included employees does not end the inquiry. Consistent with what the Board stated in *PCC Structurals*, the Regional Director was required to determine whether the employees excluded from the unit ““have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.”” *Boeing*, slip op. at 4, citing *PCC Structurals*, slip op. at 11 (quoting *Constellation Brands*, 842 F.3d at 794). If those distinct interests do not outweigh the similarities, then the unit is inappropriate. *Boeing*, slip op. at 4

The Regional Director was required to analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit. *Boeing*, slip op. at 4, citing *Constellation Brands*, 842 F.3d at 794-795. “Merely recording similarities or differences between employees does not substitute for an explanation of how and why these collective-bargaining interests are relevant and support the conclusion. Explaining why the excluded employees have distinct interests in the context of collective bargaining is necessary to avoid arbitrary lines of demarcation.” *Boeing*, slip op. at 4, quoting *Constellation Brands*, 842 F.3d at 794-795.

1. Step Two Analysis

Even if, as the Regional Director determined, the Union’s petitioned-for unit of “[f]ull time and regular part time journeyman and apprentice field ironworkers” of American Steel were deemed to share an internal community of interest, on balance, as found by the Regional Director,

¹⁴ Fractured units are one example of this issue. A fractured unit is a “combination[] of employees that [is] too narrow in scope or that ha[s] no rational basis” because the petitioned-for employees have duties, skills, and other interests that are so similar to those of excluded employees that it would be arbitrary for the two groups to be represented in different units. See *Seaboard Marine*, 327 NLRB 556, 556 (1999).

the interests of excluded American Steel employees are not meaningfully distinct from and do not outweigh similarities with the interests of the petitioned-for unit employees. The employees deemed to be in the petitioned-for unit have a high degree of functional integration with American Steel's excluded steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers. All of these employees work as a team to fabricate and install American Steel's products. None of these employees has pre-defined or exclusive job duties and responsibilities and their duties and responsibilities vary depending on need and number of installation jobs American Steel is operating on any given day. As the Board has observed before, it is "particularly inappropriate to carve out a disproportionately small portion of a large, functionally integrated facility as a separate unit." *Boeing*, slip op. at 5, quoting *Publix Super Markets*, 343 NLRB at 1027.

a. No departments

"A particularly important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation." *Gustave Fisher, Inc.*, 265 NLRB No. 130, n. 5 (1981). The Union's petitioned-for unit does not have such conformity.

American Steel directly employs all of its steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers who function as an integrated team. American Steel does not have designated job departments to which employees are assigned. For example, there is no fabrication or installation department. Welders are not exclusively assigned to perform either fabrication welding or installation welding responsibilities. A welder can be assigned to weld in the fabrication shop or at installation job sites based on need and his background, experience, and skills.

American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers do not have formal job titles or classifications or job descriptions which define or limit the scope of their responsibilities. None of these employees is permanently assigned inalterable job responsibilities. Each of these employees may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis based on need and the number of installation jobs in progress at any given time. Each of these employees may be assigned and most have been routinely assigned to perform work in American Steel's fabrication shop based on need, availability of installation work, and if installation work cannot be performed due to inclement weather conditions.

Hence, for these reasons, the excluded employees do not have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the Union's proposed unit.

b. No Distinct Skills and Training

American Steel does not require that applicants for employment have journeyman status, certifications, or licenses of any kind to obtain consideration for employment as fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers. All American Steel employees receive the same in-house training enabling them to perform both steel fabrication and installation work. They do not participate in a formal apprenticeship program or inhouse or other training program that is tantamount to an apprenticeship program. Any American Steel employee deemed by the Union to be a journeyman acquired that status while employed elsewhere.

With limited exceptions, all individuals who are hired by American Steel commence employment in the fabrication shop where they receive training and progress through job functions

concerning all aspects of steel fabrication and installation, safe operation of steel fabrication and installation equipment, safe operation of vehicles, and OSHA and MIOSHA health and safety standard applicable to both steel fabrication and installation, among other types of training, before they are assigned to perform installation work.

Hence, for these reasons, the excluded employees do not have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the Union's proposed unit.

c. No Distinct Job Functions, No Performance of Distinct Work, and Regular Overlap, Functional Integration, and Interchange with Excluded Employees

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers function as an integrated team. None of these employees has a formal job title or classification or job description which defines or limits the scope of his responsibilities. None of these employees is permanently assigned inalterable job responsibilities.

All of American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis depending on need. Installation assignments are made on a day-to-day basis by one of American Steel's superintendents, Mr. Timothy Gordon. All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform work in the fabrication shop depending on need, availability of installation work, or if inclement weather prevents installation work from proceeding.

American Steel's steel fabrication and employees, equipment operators, maintenance employees, painters, and drivers have regular contact with one another both at the fabrication shop in Livonia and at installation job sites because of American Steel's integrated steel fabrication and

installation process. Employees performing installation work on any given day routinely interact with employees performing fabrication work if issues arise concerning whether product has been correctly fabricated in accordance with the customer's engineering and architectural designs, measurements, and specifications. As noted above, American Steel's steel fabrication and employees, equipment operators, maintenance employees, painters, and drivers are required to attend weekly all employee meetings at the Livonia facility. They also share the same facilities for meals and breaks depending on where they are deployed on any given day.

Hence, for these reasons, the excluded employees do not have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the Union's proposed unit.

d. Common Terms and Conditions of Employment

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers work similar hours, are subject to the same terms and conditions of employment, are subject to the same employee handbook and work rules, wear similar attire and protective gear, work under the same safety requirements, participate in ongoing training regarding safety and other matters, and are eligible for the same fringe benefits. There is no formal wage range or scale for employees based on whether they perform fabrication or installation or work, operate cranes or other equipment, perform maintenance work, transport finished product to work sites, or paint product. Wage rates are determined based on tenure, background, skills and experience.

Hence, for these reasons, the excluded employees do not have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the Union's proposed unit.

e. Supervision

American Steel fabrication and installation workers, equipment operators, maintenance employees, painters, and drivers are supervised by and report to its two superintendents, Timothy Gordon and Sean Asbel. There is no clear division of responsibilities between Messrs. Gordon and Asbel with regard to their supervision of employees. Mr. Gordon is responsible for all installation work, assigns employees to perform installation work on a day-to day-basis based on need even if they also perform fabrication work, and employees assigned to perform installation work are accountable to him while they are assigned installation responsibilities even if they also perform fabrication work. Mr. Asbel is responsible for all fabrication work and employees who are assigned fabrication responsibilities are accountable to him even if they also perform installation work.

Hence, for these reasons, the excluded employees do not have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the Union's proposed unit.

f. Summary

Regardless of whom the Union deems to be "[f]ull time and regular part time journeyman and apprentice field ironworkers," the interests that they share with excluded American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers are far more significant than any that differentiate them. Likewise, the excluded employees do not have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with the Union's proposed unit.

The unknown "[f]ull time and regular part time journeyman and apprentice field ironworkers" are functionally integrated with excluded employees; share most of the same skills and

training with excluded employees; share supervision with excluded employees who engage in installation work; share supervision with excluded employees when they perform fabrication work or work in the fabrication shop; perform a significant portion of the same job functions as excluded employees who engage in installation work; and share the same terms and conditions of employment with excluded employees. The petitioned-for unit is inappropriate for this reason as well. *See The Boeing Company*, 368 NLRB No. 67 (2019); *Harrah's Club*, 187 NLRB 810, 812–813 (1971) (finding that “a unit limited to maintenance department employees does not comprise a homogeneous grouping of employees possessed of interests sufficiently distinct from other employees to constitute a separate unit appropriate for purposes of collective bargaining” and that all employees performing a similar primary function must be included in the unit); *Texas Color Printers, Inc.*, 210 NLRB 30, 31 (1974) (“[I]n view of the frequent work contacts and temporary interchange and overlapping supervision of employees of the shipping and receiving and bindery departments, and in the absence of any bargaining history as to any of the plant employees, we find that the shipping and receiving department employees do not enjoy a sufficiently distinct community of interest to warrant their establishment as a separate appropriate unit apart from other employees”). *See also Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942) (the Board found a unit consisting of both shop and field workers appropriate when the employer both fabricates and installs structural steel); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951) (same); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957) (same).

The Board’s decision in *McCann Steel* upon which the Union primarily relies to support its request for review is inapposite because the Board in *McCann Steel* did not conduct the *Boeing* three step analysis. In particular, the Board in *McCann Steel* did not assess whether the excluded employees have meaningfully distinct interests in the context of collective

bargaining that outweigh similarities with proposed unit members as required by the Board's *Boeing* decision. Compare *McCann Steel*, 179 NLRB at 636-636 with *The Boeing Company*, 368 NLRB No. 67, slip op. at 4, citing *PCC Structural, Inc.*, 365 NLRB 160 (2017), slip op. at 11 (quoting *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2d Cir. 2016)).

Moreover, the facts and circumstances upon which the Board's decision in *McCann Steel* was premised are distinguishable from those applicable to the Union's RC petition and the decision is otherwise inapposite to and provides no basis to overrule the Regional Director's January 4, 2021 Decision and Order because:

(a) it involved two petitions-one by a local union seeking to represent a unit of specifically designated or classified field erection crew employees and one by another union to seeking represent specifically designated or classified production and maintenance employees and truckdrivers;

(b) the Union in this case seeks to represent a bargaining unit it describes as "[f]ull time and regular part time journeyman and apprentice field ironworkers" of American Steel, *see* Petition: Board Ex. 1, although

- (i) American Steel is not a general steel erector contractor,
- (ii) it does not classify or designate any of its employees as journeymen or apprentice field ironworkers,
- (iii) it does not classify or designate any of its employees as field erection crew employees or production and maintenance employees and truckdrivers as the employer did in *McCann Steel Company*; and
- (iv) American Steel employees are cross trained, most employees are scheduled to work either in the field to perform installation work or at the shop on a day-to-day basis, and the type of work performed and the amount of time spent working in the field by employees varies based on need; and

(c) the Board's decision in *McCann Steel* was based on a decision and the record in a prior proceeding involving the employer and one of the local unions in which the Board found that:

- (i) the specifically designated or classified field erection crew employees performed essentially different types of work than specifically designated or classified production and maintenance employees and truckdrivers;
- (ii) they utilized special skills of an ironworker to perform the work under separate immediate supervision and with limited interchange;
- (iii) they were paid a premium to perform the work; and
- (iv) the specifically designated or classified production and maintenance employees and truckdrivers *only* were “assigned to the field when some ‘little insignificant job will come up,’” *compare, McCann Steel*, 179 NLRB at 636,

unlike what pertains at American Steel, i.e., American Steel employees are cross trained, most employees are scheduled to work either in the field to perform installation work or at the shop on a day-to-day basis, and the type of work performed and the amount of time spent working in the field by employees varies based on need.

Accordingly, the Union’s petitioned-for unit also does not satisfy the second step of the *Boeing* analysis. *See The Boeing Company*, 368 NLRB No. 67 (2019); *Harrah’s Club*, 187 NLRB 810, 812–813 (1971); *Texas Color Printers, Inc.*, 210 NLRB 30, 31 (1974) *Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957). *See also United States Steel Corporation*, 192 NLRB No. 12 (1971); *Brand Precision Services*, 313 NLRB 657 (1994); *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). *Compare Johnson Controls, Inc.*, 322 NLRB No. 109 (1996); *North American Aviation*, 162 NLRB 1267, 1270 (1967); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962).

D. Step Three: Special Considerations of Facility, Industry, or Employer Precedent

The third *Boeing* step includes, where applicable, consideration of guidelines that the Board has established for specific industries with regard to appropriate unit configurations. *Boeing*, slip op. at 4, citing *PCC Structural*s, slip op. at 11. In this regard, the Board has found units consisting

of both shop and field workers appropriate when the employer both fabricates and installs structural steel. *See, e.g., Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957).

The Union argued in its post hearing brief that the unknown “[f]ull time and regular part time journeyman and apprentice field ironworkers” are an appropriate craft unit to the exclusion of other American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers. However, American Steel is not a general steel erector contractor unlike all or the vast majority of employers which are signatories to the multi-employer agreement between the Union and the AGC or a national master agreement with the International union. Instead, its business is functionally and operationally integrated and involves the fabrication of structural steel, steel stairs, steel railings, steel canopies, steel pipes, steel tanks and miscellaneous other steel products for its customers and installation of these products on buildings that are undergoing construction or renovation in accordance with customer requirements. The proposed craft unit is inappropriate for these reasons, for those discussed the preceding pages, and when factors indicative of craft unit status are analyzed in conjunction with and properly applied to evidence in the record.

A craft unit is defined as:

one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment.

Burns & Roe Servs. Corp. & Int'l Union of Operating Engineers, 313 NLRB 1307, 1308 (1994).

When determining whether a group of employees constitutes a craft unit, the Board looks at:

whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.

Id.

In *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966), the Board expressly required analysis of the following factors when determining whether a unit should be severed as a craft unit:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved.
5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

Mallinckrodt Chem. Works, 162 NLRB at 397. The Board has held that the *Mallinckrodt* factors are also relevant and must be applied in non-severance cases such as this. *E.I. DuPont de Nemours and Company*, 162 NLRB 413 (1966).

1. Step Three and Craft Unit Analysis

a. American Steel is a not General Steel Erector Contractor

American Steel is not a general steel erector contractor unlike all or the vast majority of employers which are signatories to the multi-employer agreement between the Union and the AGC or a national master agreement with the International union. Instead, its business involves the fabrication of structural steel, steel stairs, steel railings, steel canopies, steel pipes, steel tanks and miscellaneous other steel products for its customers and installation of these products on buildings that are undergoing construction or renovation in accordance with customer requirements.

Hence, for these reasons, the petitioned-for unit does not meet the test applicable to separate craft units.

b. No Distinct Skills and Training

American Steel does not require that applicants for employment have journeyman status or special certifications or licenses of any kind to obtain consideration for employment as fabrication and installation employees, equipment operators, maintenance employees, painters, or drivers. All American Steel employees receive the same in-house training enabling them to perform both steel fabrication and installation work. They do not participate in a formal apprenticeship training or other program or training program that is tantamount to an apprenticeship program. Any American Steel employee deemed by the Union to be a journeyman acquired that status while employed elsewhere. With limited exceptions, all individuals who are

hired by American Steel commence employment in the fabrication shop where they receive training and progress through job functions concerning all aspects of steel fabrication and installation, safe operation of steel fabrication and installation equipment, safe operation of vehicles, and OSHA and MIOSHA health and safety standard applicable to both steel fabrication and installation, among other types of training, before they are assigned to perform installation work.

Hence, for these reasons, the petitioned-for unit does not meet the test applicable to separate craft units.

c. No Distinct and Homogenous Group of Skilled Journeymen Craftsmen

The Union has defined its petitioned-for unit as “[f]ull time and regular part time journeyman and apprentice field ironworkers” of American Steel. However, the Company does not classify or designate any of its employees as journeymen or apprentice field ironworkers. Hence, for these reasons, the Board should conclude that no craft grouping as such exists at American Steel, *see United States Steel Corporation*, 192 NLRB No. 12 (1971), slip op. at 2, and that the petitioned-for unit does not meet the test applicable to separate craft units, *id.*

d. Work Is Assigned Based on Need Rather than Craft

American Steel directly employs all of its steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers who function as an integrated team. American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers do not have formal job titles or classifications or job descriptions which define or limit the scope of their responsibilities. None of these employees is permanently assigned inalterable job responsibilities or to a particular job. Each of these employees may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis

based on need and the number of installation jobs in progress at any given time. Each of these employees may be assigned and most have been routinely assigned to perform work in American Steel's fabrication shop based on need, availability of installation work, and if installation work cannot be performed due to inclement weather conditions.

Hence, for these reasons, the petitioned-for unit does not meet the test applicable to separate craft units.

e. No Distinct Job Functions, No Performance of Distinct Work, and Regular Overlap, Functional Integration, and Interchange with Excluded Employees

American Steel's steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers function as an integrated team. None of these employees has a formal job title or classification or job description which defines or limits the scope of his responsibilities. None of these employees is permanently assigned inalterable job responsibilities or to a particular job.

All of American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been routinely assigned to perform installation work on a day-to-day basis depending on need. American Steel employees who are assigned to perform installation work at a job site on any given day perform work that involves hoisting of the finished product to the location where it will be installed, drilling holes into the finished product and foundation where it will be placed, bolting of the product into place, and welding of product as necessary in accordance with engineering and architectural measurements and specifications. A crane operator facilitates the hoisting of finished product into place. Employees at the job site assist employees who transport finished product from the fabrication shop to the job sites with unloading, staging and hoisting of finished product. The

employees who transport the finished product also may assist with the hoisting of the finished product to the location where it will be installed.

All American Steel fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers may be assigned and most have been assigned to perform work in the fabrication shop depending on need, availability of installation work, or if inclement weather prevents installation work from proceeding. American Steel employees who are assigned to work in or at the fabrication shop on any given day perform work that involves fitting and welding of fabricated steel into the applicable structural steel, steel stairs, steel railings, steel canopies, and miscellaneous other steel products requested by its customer in accordance with engineering and architectural measurements and specifications. Some of these employees also maintain equipment used for fabrication and installation, paint the finished product, prepare finished product for transport to the job sites, and transport finished product to the job sites.

Employees performing installation work on any given day also routinely interact with employees performing fabrication work if issues arise concerning whether product has been correctly fabricated in accordance with the customer's engineering and architectural designs, measurements, and specifications. American Steel's steel fabrication and employees, equipment operators, maintenance employees, painters, and drivers have regular contact with one another both at the fabrication shop in Livonia and at installation job sites because of American Steel's integrated steel fabrication and installation process. As noted above, they are required to attend weekly all employee meetings at the Livonia facility. They also share the same facilities for meals and breaks depending on where they are deployed on any given day.

Hence, for these reasons, the petitioned-for unit does not meet the test applicable to separate craft units.

f. Common Terms and Conditions of Employment

American Steel's fabrication and installation employees, equipment operators, maintenance employees, painters, and drivers work similar hours, are subject to the same terms and conditions of employment, are subject to the same employee handbook and work rules, wear similar attire and protective gear, work under the same safety requirements, participate in ongoing training regarding safety and other matters, and are eligible for the same fringe benefits. There is no formal wage range or scale for employees based on whether they perform fabrication or installation or work, operate cranes or other equipment, perform maintenance work, transport finished product to work sites, or paint product. Wage rates are determined based on tenure, background, skills and experience.

Hence, for these reasons, the petitioned-for unit does not meet the test applicable to separate craft units.

g. Supervision

American Steel fabrication and installation workers, equipment operators, maintenance employees, painters, and drivers are supervised by and report to its two superintendents, Timothy Gordon and Sean Asbel. There is no clear division of responsibilities between Messrs. Gordon and Asbel with regard to their supervision of employees. Mr. Gordon is responsible for all installation work, assigns employees to perform installation work on a day-to day-basis based on need even if they also perform fabrication work, and employees assigned to perform installation work are accountable to him while they are assigned installation responsibilities even if they also perform fabrication work. Mr. Asbel is responsible for all fabrication work and employees who are assigned fabrication responsibilities are accountable to him even if they also perform installation work.

Hence, for these reasons, the petitioned-for unit does not meet the test applicable to separate craft units.

h. Summary

Regardless of whom the Union deems to be “[f]ull time and regular part time journeyman and apprentice field ironworkers,” a separate craft unit also is inappropriate because:

a. The proposed unit is not a distinct functional, homogenous, or traditional grouping of journeymen who together with helpers and apprentices are primarily engaged in the performance of work which is not performed by other American Steel fabrication and installation employees;

b. Their work does not generally require the use of substantial craft skills and specialized tools and equipment that are not utilized by other American Steel fabrication and installation employees routinely assigned to perform installation work on a day-to-day basis.

Instead, the duties and responsibilities of the unknown “[f]ull time and regular part time journeyman and apprentice field ironworkers” are integrated with and overlap those of excluded fabrication and installation employees with whom they routinely work and otherwise interact. Indeed, the circumstances of their employment are similar to the unit of welders that the union sought to sever from an established unit in *North American Aviation*, 162 NLRB 1267 (1967), which the Board deemed to be an inappropriate unit.

In *North American Aviation*, the Board applied all relevant *Mallinckrodt* factors and held that it a unit of welders severed from an established unit of welders and production and maintenance employees was inappropriate because it would have been disruptive to the integrated nature of the employer’s processes. 162 NLRB 1267, 1270 (1967). The Board

noted “we are here confronted with a group of employees who, though craftsmen [welders], do not in the traditional sense possess strong craft identity...their skills are generally regarded as non-apprenticeable and the varied sources from which welders in the instant case have acquired skills and experience serve to distinguish them from other groups possessing such identity.” *Id.* The Board determined that the welders did not have a separate community of interest from other members of the unit from which severance was sought because of the integrated nature of the employer’s processes, the work of welders was performed in conjunction with that of non-welders and intimately related to the overall production effort, there was frequent contact between and interdependence of welders and non-welders in the performance of their duties, common supervision of welders and non-welders, and the welders were separated from each other both on a geographic and supervisory basis. 162 NLRB at 1271.

Accordingly, the Union’s petitioned-for unit of “[f]ull time and regular part time journeyman and apprentice field ironworkers” also does not satisfy the third step of the *Boeing* analysis and it is not an appropriate craft unit. *North American Aviation*, 162 NLRB at 127)-1270. *See also The Boeing Company*, 368 NLRB No. 67 (2019); *United States Steel Corporation*, 192 NLRB No. 12 (1971); *Brand Precision Services*, 313 NLRB 657 (1994); *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980); *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). *Compare Johnson Controls, Inc.*, 322 NLRB No. 109 (1996); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962); *Detroit Incinerator Co.*, 45 NLRB 414, 417 (1942); *Comwel Co.*, 88 NLRB 810, 812 (1950); *Pointer-Willamette Co.*, 93 NLRB 673, 674–75 (1951); and *Plant City Welding & Tank Co.*, 118 NLRB 280, 283 (1957).

Indeed, the Union is not qualified to represent the proposed unit because:

a. The Union does not negotiate contracts with a company like American Steel on an individual basis;

b. The employers with which the Union deems it has a contract actually are parties to a multi-employer agreement between the Union and the AGC or a national master agreement with the International union; and

c. Journeymen and apprentices who perform work for employers that are signatories to a multi-employer agreement between the Union and the AGC or national master agreements with the International are not directly employed by the employers unlike American Steel employees, but instead are referred by the Union to the employers for work on a job-by-job basis;

VI. CONCLUSION

Accordingly, the Employer respectfully requests that the Board deny the Union's Request for Review and sustain the Regional Director's January 4, 2021 decision and Order dismissing the Union's RC petition,

/s/ Raymond J. Carey

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I hereby certify that I caused to be served a copy of the foregoing Post Hearing Brief as indicated below:

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